

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GREGORY JOSEPH HOUSE.

Case No. 2:17-cv-04584-VBF-KES

Petitioner.

ORDER TO SHOW CAUSE

V.

CALIFORNIA INSTITUTION FOR MEN.

Respondent.

On June 15, 2017, Petitioner Gregory Joseph House (“Petitioner”) constructively filed a Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28 U.S.C. § 2254. (“Petition”) (Dkt. 1.) As discussed more fully below, the Court orders Petitioner to show cause why the Petition should not be dismissed as untimely.

L.

BACKGROUND

The following facts are taken from the Petition, from the Court's own records, or from public records; where necessary, the Court takes judicial notice of the latter. See Fed. R. Evid. 201(b)(2) ("The court may judicially notice a fact that is not subject to reasonable dispute because it ... can be accurately and readily

1 determined from sources whose accuracy cannot reasonably be questioned.”);
2 United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980) (“[A] court may take
3 judicial notice of its own records in other cases, as well as the records of an inferior
4 court in other cases.”)

5 Petitioner challenges a conviction and sentence entered on July 1, 2014.
6 (Petition at 2.) He pled “no contest” and did not appeal. (Id.) He subsequently
7 filed a habeas petition on Los Angeles County Superior Court case no. BA426197.
8 (Id. at 4.) While the Petition does not indicate when this superior court petition was
9 filed, the Los Angeles County Superior Court’s online records indicate a filing date
10 of June 6, 2017. The California Supreme Court’s online records indicate that
11 Petitioner filed a habeas petition in that court on June 12, 2017.

12 **II.**

13 **DISCUSSION**

14 **A. Legal Standard**

15 The Ninth Circuit has held that the district court has the authority to raise the
16 statute of limitations issue sua sponte when untimeliness is obvious on the face of
17 the Petition and to summarily dismiss a habeas petition on that ground pursuant to
18 Rule 4 of the Rules Governing Section 2254 Cases in the United States District
19 Courts, so long as the Court “provides the petitioner with adequate notice and an
20 opportunity to respond.” See Nardi v. Stewart, 354 F.3d 1134, 1141 (9th Cir.
21 2004); Herbst v. Cook, 260 F.3d 1039, 1042-43 (9th Cir. 2001).

22 **1. One-Year Statute of Limitations**

23 This action is subject to the Antiterrorism and Effective Death Penalty Act of
24 1996 (“AEDPA”). Calderon v. U.S. Dist. Court for the Cent. Dist. of Cal. (Beeler),
25 128 F.3d 1283, 1287 n.3 (9th Cir. 1997), cert. denied, 522 U.S. 1099 (1998).¹

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27 ¹ Beeler was overruled on other grounds in Calderon v. U.S. Dist. Court
28 (Kelly), 163 F.3d 530, 540 (9th Cir. 1998) (en banc), cert. denied, 526 U.S. 1060
(1999).

1 AEDPA provides as follows:

2 (d) (1) A 1-year period of limitation shall apply to an application for
3 a writ of habeas corpus by a person in custody pursuant to the
4 judgment of a State court. The limitation period shall run from the
5 latest of--

6 (A) the date on which the judgment became final by the
7 conclusion of direct review or the expiration of the time for seeking
8 such review;

9 (B) the date on which the impediment to filing an application
10 created by State action in violation of the Constitution or laws of the
11 United States is removed, if the applicant was prevented from filing
12 by such State action;

13 (C) the date on which the constitutional right asserted was
14 initially recognized by the Supreme Court, if the right has been newly
15 recognized by the Supreme Court and made retroactively applicable to
16 cases on collateral review; or

17 (D) the date on which the factual predicate of the claim or
18 claims presented could have been discovered through the exercise of
19 due diligence.

20 (2) The time during which a properly filed application for State post-
21 conviction or other collateral review with respect to the pertinent
22 judgment or claim is pending shall not be counted toward any period
23 of limitation under this subsection.

24 28 U.S.C. § 2244(d).

25 Thus, AEDPA “establishes a 1-year time limitation for a state prisoner to file
26 a federal habeas corpus petition.” Jimenez v. Quarterman, 555 U.S. 113, 114
27 (2009). The statute of limitations period generally runs from “the date on which the
28 judgment became final by the conclusion of direct review or the expiration of the

1 time for seeking such review.” 28 U.S.C. § 2244(d)(1)(A). “[F]or a state prisoner
2 who does not seek review in a State’s highest court, the judgment becomes ‘final’
3 for purposes of § 2244(d)(1)(a) on the date that the time for seeking such review
4 expires.” Gonzalez v. Thaler, 565 U.S. 134, 135 (2012). The time for seeking
5 appellate review of Petitioner’s underlying conviction expired on August 30, 2014,
6 i.e., 60 days after it was entered. See Cal. R. Ct. 8.308(a).

7 **2. Statutory Tolling**

8 AEDPA provides for statutory tolling, as follows:

9 The time during which a properly filed application for State post-
10 conviction or other collateral review with respect to the pertinent
11 judgment or claim is pending shall not be counted toward any period
12 of limitation under this subsection.

13 28 U.S.C. § 2244(d)(2). The United States Supreme Court has interpreted this
14 language to mean that the AEDPA’s statute of limitations is tolled from the time the
15 first state habeas petition is filed until the California Supreme Court rejects a
16 petitioner’s final collateral challenge, so long as the petitioner has not unreasonably
17 delayed during the gaps between sequential filings. Carey v. Saffold, 536 U.S. 214,
18 219-21 (2002) (holding that, for purposes of statutory tolling, a California
19 petitioner’s application for collateral review remains pending during the intervals
20 between the time a lower state court denies the application and the time the
21 petitioner files a further petition in a higher state court); Nino v. Galaza, 183 F.3d
22 1003, 1006 (9th Cir.), cert. denied, 529 U.S. 1104 (2000)(The statute is tolled from
23 “the time the first state habeas was filed until the California Supreme Court rejects
24 the petitioner’s final collateral challenge.”).

25 Importantly for Petitioner, statutory tolling “does not permit the reinitiation
26 of a limitations period that has ended before the state petition was filed,” even if the
27 state petition was timely filed. Ferguson v. Palmateer, 321 F.3d 820, 823 (9th Cir.),
28 cert. denied, 540 U.S. 924 (2003); Jimenez v. Rice, 276 F.3d 478, 482 (9th Cir.

1 2001); Wixom v. Washington, 264 F.3d 894, 898-99 (9th Cir. 2001), cert. denied,
2 534 U.S. 1143 (2002).

3 **3. Equitable Tolling**

4 In Holland v. Florida, 560 U.S. 631, 649 (2010), the Supreme Court held that
5 the AEDPA’s one-year limitation period also is subject to equitable tolling in
6 appropriate cases. However, in order to be entitled to equitable tolling, the
7 petitioner must show both that (1) he has been pursuing his rights diligently, and
8 (2) some extraordinary circumstance stood in his way and prevented his timely
9 filing. See Holland, 130 S. Ct. at 2562 (quoting Pace, 544 U.S. at 418). The Ninth
10 Circuit has held that the Pace standard is consistent with the Ninth Circuit’s
11 “sparing application of the doctrine of equitable tolling.” Waldron-Ramsey v.
12 Pacholke, 556 F.3d 1008, 1011 (9th Cir.), cert. denied, 130 S. Ct. 244 (2009).
13 Thus, “[t]he petitioner must show that ‘the extraordinary circumstances were the
14 cause of his untimeliness and that the extraordinary circumstances made it
15 impossible to file a petition on time.’” Porter, 620 F.3d at 959 (quoting Ramirez v.
16 Yates, 571 F.3d 993, 997 (9th Cir. 2009)). “[T]he threshold necessary to trigger
17 equitable tolling [under AEDPA] is very high, lest the exceptions swallow the
18 rule.” Miranda v. Castro, 292 F.3d 1063, 1066 (9th Cir.), cert. denied, 537 U.S.
19 1003 (2002). Consequently, as the Ninth Circuit has recognized, equitable tolling
20 will be justified in few cases. Spitsyn v. Moore, 345 F.3d 796, 799 (9th Cir. 2003);
21 Waldron-Ramsey, 556 F.3d at 1011 (“To apply the doctrine in ‘extraordinary
22 circumstances’ necessarily suggests the doctrine’s rarity, and the requirement that
23 extraordinary circumstances ‘stood in his way’ suggests that an external force must
24 cause the untimeliness, rather than, as we have said, merely ‘oversight,
25 miscalculation or negligence on [the petitioner’s] part, all of which would preclude
26 the application of equitable tolling.’”).

27 The burden of demonstrating that the AEDPA’s one-year limitation period
28 was sufficiently tolled, whether statutorily or equitably, rests with the petitioner.

1 See, e.g., Pace v. DiGuglielmo, 544 U.S. 408, 418 (2005); Banjo v. Ayers, 614 F.3d
2 964, 967 (9th Cir. 2010); Gaston v. Palmer, 417 F.3d 1030, 1034 (9th Cir. 2005) (as
3 amended); Miranda v. Castro, 292 F.3d 1063, 1065 (9th Cir. 2002).

4 **B. The Petition Appears to Be Untimely.**

5 Petitioner's conviction became final on August 30, 2014, at which point
6 AEDPA's one-year limitations period began to run. Absent statutory or equitable
7 tolling, that limitations period expired on August 30, 2015. Petitioner has not
8 demonstrated that he filed any state habeas petitions prior to that date which could
9 create statutory tolling. Petitioner has not described any circumstances in his
10 Petition that might create equitable tolling.

11 IT IS THEREFORE ORDERED that, on or before **July 26, 2017**, Petitioner
12 show cause in writing, if any he has, why the Court should not recommend that this
13 action be dismissed with prejudice on the ground of untimeliness.

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15 DATED: June 26, 2017

16
17 *Karen E. Scott*

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19 KAREN E. SCOTT
20 UNITED STATES MAGISTRATE JUDGE

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